IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 687 of 2005.

Date of decision: 03.01.2006.

Vinod Kumar ... Appellant

Versus

Amar Singh & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

For the respondents: Mr. R.K. Gautam, Senior Advocate with Mr. Anurag Sharma, Advocate, for respondent No. 4.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the plaintiff - appellant against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiff was dismissed by the trial Court and the appeal filed by him was also dismissed by the learned District Judge.

The plaintiff had filed a suit for declaration etc. challenging the gift deed dated 18.6.1997 executed by defendant No.1 Smt. Brahmi Devi in favour of defendant No. 2 Surinder Kumar. The case of the plaintiff was that one half of the property held by Smt. Brahmi Devi was

[1]Whether reporters of Local Papers may be allowed to see the judgment?

earlier gifted by her to defendant No.2 Surinder Kumar, vide gift deed dated 7.5.1996 and she had agreed to give the remaining one half of the property to the plaintiff, by way of an agreement dated 28.7.1996 and had also executed a Will dated 4.1.1997 in favour of the plaintiff. It was alleged that Smt. Brahmi Devi, defendant, having agreed to give one half of the property to the plaintiff by way of agreement dated 28.7.1996, could not have gifted away the suit property to defendant No. 2 by virtue of gift deed dated 18.6.1997. Both the Courts below dismissed the suit of the plaintiff holding that the subsequent gift deed dated 18.6.1997 executed by Smt. Brahmi Devi in favour of defendant No.2 Surinder Kumar was perfectly legal and valid and was not affected by the agreement dated 28.7.1996 in favour of the plaintiff. These findings given by the Courts below, in my opinion, are findings of fact, based on evidence led by the parties and do not call for any interference from this Court in the present Regular Second Appeal, especially when nothing has come on the record to show that there was any misreading of evidence or that any material piece of evidence was ignored by the Courts below, while giving these findings.

As referred to above, there is only an agreement dated 28.7.1996, allegedly executed by Smt. Brahmi Devi in favour of Surinder Kumar. Infact the said document cannot be termed as agreement since admittedly, it is not signed by the plaintiff and is allegedly signed only by Smt. Brahmi Devi. Under these circumstances, said document cannot be said to be an agreement. The contention of the learned counsel appearing for the plaintiff – appellant that the said agreement could be treated as a family settlement, in my opinion, is also devoid of any force. Copy of the

said document was read over before me by the learned counsel appearing for the parties. As per the said document, it could not be said that Smt. Brahmi, defendant, had given the suit property to the plaintiff – appellant by way of family settlement. At the most, it could be said that Smt. Brahmi Devi had given her mind to give the suit property to the plaintiff. However, she had not given the suit property to the plaintiff either by virtue of that document or by virtue of any other document. On the other hand, Smt. Brahmi Devi had gifted the suit property to defendant No. 2 Surinder Kumar and that being so, in my opinion, the plaintiff cannot be allowed to challenge the said gift deed on the ground that Smt. Brahmi Devi had executed any agreement in favour of the plaintiff. The document in question could be considered to be family settlement only if by virtue of that document Smt. Brahmi Devi had given the property in dispute to the plaintiff. On the other hand, as per the said document, Smt. Brahmi Devi had at the most promised to give the suit property to the plaintiff. As referred to above, it is an unilateral document signed by Smt. Brahmi Devi alone and not by the plaintiff. Keeping in view the facts and circumstances of the present case, in my opinion, both the Courts below had rightly dismissed the suit of the plaintiff and not fault could be found in the same.

In view of the detailed discussion above, in my opinion, there is no scope for interfering in the present Regular Second Appeal, especially when no question of law, much less a substantial question of law, arises for determination in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

CMP No. 1178 of 2005:

In view of the dismissal of the main appeal, this application has become infructuous.

(V.M. Jain),
Judge

January 03, 2006
(BSS)